

| IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA | |
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| GERALD DePESTRE, Plaintiff, v. WADDELL & REED, Defendant. | Case No. 02-CV-3996 |

**DEFENDANT'S ANSWER TO
PLAINTIFF'S MOTION TO REMAND**

Defendant, Waddell & Reed, Inc., (sued as "Waddell & Reed"), by and through their undersigned attorneys, petitions the Court to deny plaintiff's Motion to Remand for the following reasons:

1. Defendant admits that plaintiff alleges certain injuries resulting from an alleged motor vehicle accident. Defendant further admits that it removed this action from the Court of Common Pleas of Philadelphia County on the basis of diversity jurisdiction.

2. Plaintiff does not assert that defendant has a principal place of business in the Commonwealth of Pennsylvania, and defendant denies that it does. Nor does plaintiff stipulate the amount in controversy, which a reasonable jury could find to exceed the jurisdictional minimum.
 - (a) Defendant admits that the Notice of Removal uses "a principal place of business," but said Notice specifically distinguishes between defendant's principal place of

business and its branch office identified as located in Pennsylvania. Further, defendant's Answer to plaintiff's Complaint specifically states that "its principal place of business" is in the State of Kansas. Answer, ¶2.

(i) Plaintiff, according to his Complaint, is an individual who resides at 650 Atwood Road, Philadelphia, Pennsylvania 19151. Thus, he is a citizen of Pennsylvania.

(ii) Defendant, at the time the Complaint was filed, and at the time the Notice of Removal was filed, was and continues to be incorporated under the laws of the State of Delaware, with its principal place of business in the State of Kansas, located at 6300 Lamar Avenue, Overland Park, Kansas 66202. Thus, defendant is not a citizen of Pennsylvania.

(iii) The record makes clear that, based upon the factual allegations in defendant's Notice of Removal and Answer to plaintiff's Complaint, defendant's principal place of business is in the State of Kansas. Thus, complete diversity exists between plaintiff and defendant.

(b) As to the amount in controversy, plaintiff has not agreed to stipulate that his damages do not exceed the jurisdictional limit, and a reasonable jury could find that they do. Further, plaintiff's Complaint alleges identical injuries to those alleged in Bryant v. Ferguson Enterprises, Inc., No. 02-1677, 2002 WL 1067459, at *2 (E.D. Pa. May 29, 2002) (Waldman, J.), which were held to be the kind that a reasonable jury could find to exceed the jurisdictional minimum, thereby satisfying the amount in controversy requirement.

3. Accordingly, plaintiff's Motion to Remand should be denied.

WHEREFORE, defendant respectfully requests that this Court enter an order denying plaintiff's Motion to Remand.

Respectfully submitted,

Dated: July 3, 2002

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**Attorneys for defendant
Waddell & Reed**

CERTIFICATE OF SERVICE

I, Hope S. Freiwald, hereby certify that I caused to be served on July 3, 2002, a true and correct copy of the foregoing Defendant's Answer to Plaintiff's Motion to Remand by first-class mail upon the following:

Phillip H. Baer, Esquire
PHILLIP H. BAER, LTD.
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Philadelphia, PA 19102

Attorney for plaintiff

Hope S. Freiwald

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| <p>GERALD DePESTRE, v. WADDELL & REED,</p> | <p>Plaintiff, Defendant.</p> |
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ORDER

AND NOW, this _____ day of _____, 2002, upon consideration of Plaintiff's Motion to Remand and accompanying memorandum, and Defendant's Answer to Plaintiff's Motion to Remand and accompanying brief, it is hereby ORDERED and DECREED that Plaintiff's Motion to Remand is hereby DENIED.

BY THE COURT:

Eduardo C. Robreno, J.